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 RICHARD W. WILKING
 CLERK OF DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JOHN DOE,

12 Plaintiff,

13 vs.

14 CENDANT CORPORATION SHORT TERM
 15 DISABILITY PLAN,

16 Defendant.

Case No.

COMPLAINT (ERISA)

007-04908

17
 18 JURISDICTION

19 1. This action for declaratory, injunctive, and monetary relief is brought pursuant to
 20 § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §
 21 1132(a)(1)(B). This Court has subject matter jurisdiction over Plaintiff's claims pursuant to
 22 ERISA § 502(e) and (f), 29 U.S.C. § 1132(e) and (f), and 28 U.S.C. § 1331.

23 VENUE

24 2. Venue lies in the Northern District of California pursuant to ERISA § 502(e)(2),
 25 29 U.S.C. § 1132(e)(2), because the breaches alleged occurred in this District. Venue is also
 26 proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions
 27 giving rise to Plaintiff's claims occurred within this District.
 28

1 10. On or about April 20, 2004, Plaintiff approached his supervisor, Tamer Mamou,
2 and told him that he wanted to take a leave of absence to seek treatment for alcohol abuse. In
3 Plaintiff's presence, Mr. Mamou called Kevin Fiore, Cendant Regional Vice President, and
4 Michael Meic in Cendant's Human Resources department, who approved Plaintiff's request. He
5 took a leave of absence starting that day.

6 11. On April 23, 2004, Plaintiff entered an inpatient detoxification and rehabilitation
7 program at the Betty Ford Center in Rancho Mirage, California. He successfully completed that
8 program.

9 12. On May 21, 2004, Plaintiff was discharged from the Betty Ford Center into an
10 outpatient treatment program at Kaiser Permanente Walnut Creek Medical Center. He began
11 treatment at Kaiser Walnut Creek on May 24, 2004.

12 13. In July 2004, Plaintiff relapsed, and as a result sought more intensive outpatient
13 treatment at the Chemical Dependency Recovery Program (CDRP) at Kaiser Permanente
14 Oakland Medical Center. He was admitted to CDRP on August 7, 2004, and graduated in
15 February 2005.

16 14. The Plan provides for short-term disability benefits for up to 25 weeks. To be
17 eligible for these benefits, an employee must meet the Plan's definition of total or partial
18 disability. Total disability is defined as earning less than 20% of pre-disability salary due to an
19 injury or illness (specifically including substance abuse or mental illness) which prevents the
20 employee from performing all of the essential duties of his or her job.

21 15. The Plan further provides that short-term disability benefits will commence on the
22 sixth consecutive working day of absence due to disability. The percentage of salary paid
23 depends upon years of service. Because Plaintiff had worked for Trendwest and Cendant for just
24 under five years when he became disabled, he was entitled to receive 100% of his salary for 10
25 weeks and 70% of his salary for 15 weeks, less an offset for any other disability benefits
26 received.

27 16. At all relevant times, CORE WorkAbility was a fiduciary of the Plan within the
28 meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that CORE WorkAbility acted as claims

1 fiduciary for the Plan and exercised authority and control over the payment of short-term
2 disability benefits, which are assets of the Plan. On information and belief, CORE had authority
3 to approve claims for benefits under the Plan.

4 17. On information and belief, between September 13, 2004, and October 27, 2004,
5 CORE WorkAbility changed its name to Broadspire. Broadspire was also a fiduciary of the Plan
6 within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that Broadspire acted as claims
7 fiduciary for the Plan and exercised authority and control over the payment of short-term
8 disability benefits, which are assets of the Plan. On information and belief, Broadspire had
9 authority to approve claims for benefits under the Plan.

10 18. By letter dated August 19, 2004, CORE informed Plaintiff that he was approved
11 for short-term disability benefits for April 23, 2004 through May 20, 2004.

12 19. By letter dated August 27, 2004, CORE informed Plaintiff that he was approved
13 for benefits for May 21, 2004 through August 22, 2004.

14 20. By letter dated September 13, 2004, CORE informed Plaintiff that he was
15 approved for benefits for August 23, 2004 through October 1, 2004.

16 21. By letter dated October 27, 2004, Broadspire informed Plaintiff that he was
17 approved for benefits for October 2, 2004 through October 18, 2004.

18 22. Despite having been approved for benefits, Plaintiff never received payment from
19 the Plan.

20 23. By letter dated November 19, 2004, Trendwest's Director of Human Resources,
21 Michael Meic, informed Plaintiff that his employment was terminated pursuant to a company
22 policy that leaves of absence longer than six months are subject to administrative termination.

23 24. In November, 2004, Plaintiff called a Human Resources representative, Woody
24 Whitaker, to inquire as to the status of payment of his short-term disability benefits. Mr.
25 Whitaker informed Plaintiff that Cendant did not intend to pay the approved benefits.

26 **FIRST CLAIM FOR RELIEF**

27 **[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B)]**

28 33. Plaintiff incorporates Paragraphs 1 through 25 as though fully set forth herein.

34. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant to bring a civil action to recover benefits due to him under the terms of a plan, to enforce his rights under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a plan.

35. Plaintiff is entitled to short-term disability benefits under the Plan for the period from April 23, 2004, through October 18, 2004, but the Plan has failed to pay the benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:


- A. Declare that Defendant violated the terms of the Plan by failing to pay Plaintiff short-term disability benefits pursuant to the terms of the Plan from April 23, 2004 through October 18, 2004;
- B. Order Defendant to pay short-term disability benefits to Plaintiff from April 23, 2004 through October 18, 2004, together with prejudgment interest on each and every such monthly payment through the date judgment is entered herein;
- C. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- D. Provide such other relief as the Court deems equitable and just.

Dated: 9/21/07

Respectfully submitted,

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON P.C.

By:



Nina Wasow

Attorneys for Plaintiff